

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STEVE OSBORN,

Plaintiff,

vs.

**9:20-CV-673
(TJM/ATB)**

DEBORAH HARRIS, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* Complaint to Magistrate Judge Andrew T. Baxter for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that Defendants, guards at the Oneida County Correctional Facility, violated his First Amendment rights during his incarceration there.

Magistrate Judge Baxter's Report-Recommendation, dkt. # 6, issued on January 15, 2021, recommends that the Court grant Defendants' motion to dismiss in part and deny their motion to dismiss in part. Magistrate Judge Baxter concludes that, while Plaintiff's failure to exhaust his administrative remedies can be excused because such remedies were not available to him, he has largely failed to state substantive claims. Magistrate Judge Baxter recommends dismissal of Plaintiff's claim that Defendants excessively burdened his right to practice his religion by failing on a few occasions to bring him his

breakfast before daylight during Ramadan. He also recommends that the Court dismiss all First Amendment retaliation claims against the Defendants except for Plaintiff's claim against Defendant Deborah Harris.

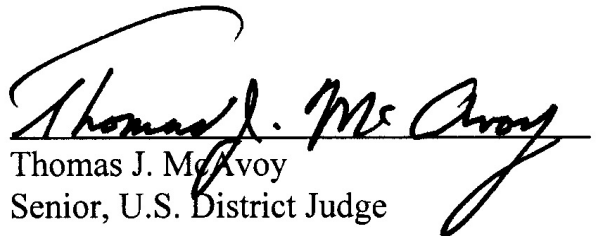
Petitioner did not object to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Baxter, dkt. # 35, is hereby **ACCEPTED** and **ADOPTED**. Defendants motion to dismiss, dkt. # 25, is hereby **GRANTED IN PART** and **DENIED IN PART**, as follows: The motion is **DENIED** with respect to Plaintiff's First Amendment Retaliation claim against Defendant Harris and **GRANTED** in all other respects. The Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE as to all Defendants except Harris and as to all other claims except the First Amendment Retaliation claim against Harris.

IT IS SO ORDERED.

Dated: March 24, 2021


Thomas J. McAvoy
Senior, U.S. District Judge